SUPREME COURT OF THE UNITED STATES.

No. 222.

THE UNITED STATES, APP'TS.

vs.

VALENTIN COTA AND AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Rio de Santa Clara."

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1 *Transcript of the proceedings in case No.* 225.

2

VALENTIN COTA *et al.*, claimants, } For the place named "Rio de Santa
vs. Clara."
THE UNITED STATES, defendant. }

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this tenth day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Valentin Cota *et al.* for the place named "Rio de Santa Clara" was presented, and ordered to be filed and docketed with No. 225, and is as follows, to wit:

(*Vide* page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *May* 10*th*, 1852.

In case No. 225, Valentin Cota *et al.*, for the place named "Rio de Santa Clara," the deposition of Pablo de la Guerra, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, was filed.

(*Vide* page 6, of this transcript.)

LOS ANGELES, *Sept.* 3*d*, 1852.

In the same case the parties litigant filed the following deposition relative to placing this case on the trial docket, to wit:

(*Vide* page — of this transcript.)

4 Case No. 225 was ordered to be placed on the trial docket subject to the stipulation filed by the parties litigant.

SAN FRANCISCO, *January* 28, 1853.

Case No. 225 called, and was submitted by Mr. Halleck, counsel of claimants, with the papers in evidence, by consent of the U. S. associate law agent, without argument, and taken under advisement by the board.

SAN FRANCISCO, *April* 22*d*, 1853.

Commissioners Hiland Hall and Harry J. Thornton returned to the secretary the papers appertaining to case No. 225, and others which they had under advisement, without making decisions thereon; after which, pursuant to a notice in the National Intelligencer, they withdrew, and ceased to act as commissioners and members of this board.

SAN FRANCISCO, *Feb'y* 11, 1853.

Case No. 225, on motion of the U. S. law agent, was ordered to be placed on the trial docket.

SAN FRANCISCO, *July* 12, 1853.

Case No. 225 was called; Mr. Halleck, one of the attorneys for the claimants, read the evidence and opened the argument. Answered by the U. S. law agents, and continued for further argument.

5 SAN FRANCISCO, *July* 12, 1853.

Case No. 225 called; argument resumed in behalf of the United States, and continued for further argument to-morrow.

SAN FRANCISCO, *July* 13, 1853.

Case No. 225 called; argument in behalf of the claimants resumed and concluded. Case submitted and taken under advisement by the board.

SAN FRANCISCO, *October* 31, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(*Vide* page 19 of this transcript.)

And the following order was made to wit:

(*Vide* page 25 of this transcript.)

6

7 *Petition.*

TO THE HONORABLE COMMISSIONERS TO SETTLE PRIVATE LAND CLAIMS IN CALIFORNIA:

The petitioners, Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Feliz, respectfully show that on the 22nd day of May, A. D. 1837, Juan B. Alvarado, governor of California, by virtue of the authority in him vested, granted to the petitioners a certain tract of land on the Santa Clara river, in the present county of Santa Barbara, more particularly described in the title and map, a copy of which title and map is submitted herewith, marked A, with a translation marked B.

That on the 28th day of September, A. D. 1840, the said tract of land was duly surveyed, and the judicial possession of it given to the petitioners in due form, a copy of which juridicial possession is submitted herewith, marked C, with a translation marked D.

And the petitioners further show that the said tract of land has not been surveyed by the surveyor general of the United States, but that it was duly surveyed at the time of giving the juridicial possession of it.

That the petitioners have been in possession and occupation of said tract of land since 1837, and all under the quiet, peaceful, and undisputed possession and occupation of the land described in said grant and judicial possession. And they know of no conflicting claim; that

they rely for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and minutes in
8 the archives in the office of the surveyor general, and upon such other and further proofs as they may be advised are necessary.

Wherefore the petitioners pray the commissioners to confirm to them the aforesaid tract of land.

By their attorneys—

HALLECK, PEACHY & BILLINGS.

Filed in office May 10th, 1852.

GEORGE FISHER, *Secretary.*

Recorded in Record of Petitions, volume 1, pages 90 and 91.

GEORGE FISHER, *Secretary.*

9 *Deposition of Pablo de la Guerra.*

OFFICE OF THE BOARD OF LAND COMMISSIONERS IN CALIFORNIA,
San Francisco, May 10, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimants, Valentin Cota *et als.*, whose petition is No. 225 on the docket of said commissioners, and after being duly sworn testified as follows:

The U. S. law agent was duly notified and attended.

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is thirty-two years; I reside in Santa Barbara, and have resided in California all my life.

2nd question. Do you know the signatures of Juan B. Alvarado, Victor Prudon, Rafael Gonzales, Antonio Olvera, and José Lemuel O. Douga; if so, are the signatures to the paper before you genuine; are these papers genuine, and are Exhibits A and C, in claim number 225, filed in the office of the secretary of the commissioners, true copies of these originals?

Answer. I know the signatures of Juan B. Alvarado, Victor Prudon, Rafael Gonzales, Antonio Olvera, and José Lumin A. Doudja. Their signatures to the papers before me are genuine, and Exhibits A and C are true copies of these originals.

10 Question 3. What do you know about the possession and occupation of the land described in the papers above referred to?

Answer. The land referred to has been occupied by the claimants at least since 1838, and I believe they went into possession before 1838, and immediately after the grants they have built houses, corrals, fences, enclosed grounds and cultivated it, and have stock of cattle and horses upon it.

Questions by U. S. law agent.

1st question. To what extent was the land cultivated?

Answer. About sixty or ninety yards square. They raised upon it what was necessary to their own consumption, grain and vegetables;

there may have been more than this. Some years they cultivated more and some years less. The land was cultivated in different parcels, and I am not able to say what these parcels altogether would amount to, but my impression is that altogether it would amount to about two hundred yards square.

2nd question. Is all this land within the ten littoral leagues?

Answer. It is.

PABLO DE LA GUERRA.

The law agent notified and present.

11 Sworn to and subscribed before me this 10th of May, 1852.

HARRY J. THORNTON,
Commissioner.

Filed in office May 10th, 1852.

GEO. FISHER, *Secretary.*

Recorded in evidence, volume 1st, pages 343 and 344.

GEORGE FISHER, *Secretary.*

(Here follows map marked original, page 12.)

13

14 *Titled papers.*

El ciudadano Juan B. Alvarado, Gobernador Into del Estado, libre y soberano de la Alta California y presidente de la ex'ma diputacion erigida en Congress constituyente.

Por cuanto los ciudadanos Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, V'te Pico, Rafael Valdez y Vicente Felis han pretendido situarse con seisente reces y familias en las tierras del rio de Santa Clara cuya comprencion y limites se demarcan en el diseño q. al efecto formara el Sr. alcalde de esta municipalidad; y en cumplimiento de la facultad que en acuerdo de 2o del corriente confierio el congress del estado del gobierno para espedir interimamente los despachos respectivos á los individuos q. desean ocupar esas poseciones hé venido en conceder á los espresados ciudadanos la ocupation de dichas tie ras bajo las condiciones siguientes.

1a. Se presentaran con este despacho á la autoridad municipal de Santa Barbara quien les marcaran los parages en que hayan de cituarse.

2o. Dha. autoridad mandará levantar un plano o diseño de los terrenos demarcados y lo remitara apartemante al gobierno.

Es dado en la ex-Micion de Sta. Barbara á 22 de Mayo de 1837.

JUAN B. ALVARADO.

VICTOR RUDHIN,
S'rio Int.

15 [SEAL.]

Sta. Barbara, 23 *F'o de* 1840.

Los interesado en este instancia quedaran estendidos que pa. el dia 30 de F'b'o derevan prevenirse para recibir la posecion que solicita. El Ciud'o Antonio Olivera, juez de paz de esta municipalidad, asi lo mandó decretó y firmó.

ANTONIO OLIVERA.

Sor Juez de Paz del Puerto de Santa Barbara:

Los Ciudadanos Valentin Cota y Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez y Vicente Felis, en el citio del rio de Santa Clara, ante la integridad de V. se presenten afin de que tenga la bondad dedarles la posecion del citio que estan poseando, el cual esta demarcado en la comprencion del rio de Santa Clara segun lo manifiesta el diseño que al efecto acompaño. Por tanto A. V. suplican se serva el tener la bondad de aseder á esta su solicitad pues en esta esperan recibir merced y gracia.

Sta Barbara, *F'o* 23 *de* 1840.

Por se y á nombre de los interesado.

RAFAEL GONZALES.

En el presidio de Santa Barbara á los veinte y ocho dias del mes de Feb'o del año de mil ochocientos quarante aunente á la solicitud hecha por los ciudadanos Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valdez, y Vicente Felis afin de que se les de la correspondiente posesion del citio conocido con el nombre de Santa Clara concedido en el gob'no de este depart'o y habiendo la falta de un
16 agrimensor que para efecto de los medidas correspond'tes devia comparecer para que remedar el conocido terreno lo hize yo el primer nombrado juez de paz. Ciudadano Antonio Olivera contotal arreglo a las primeras medidas que se an practicadas cuyo diseño se agrega al espediente, pase por mi y los testigos de mi asistencia al espresado citio y procedase á dar la posecion indicada arreglandoze el titulo que se les a conferido por el supremo gobierno de este departamento con fecha veinte y dos de Mayo de mil ochocientos treinta y ciete. Yo el espresado juez de esta municipalidad asi lo decreté, mandé y firmé con los testigos de mi assistencia José Simon Odonifa, de asistencia, Antonio Rodriguez. En el referido lugar y en d'ho dia, mes y año yo el propio juez para la practica de estas diligencias nombre dos oficiales cordeleros y dos medidores á quienes les hize saber su nombramento el que aceptaron bajo de juramento que otorgaron ofreciendo desempeñar fielmente su encargo lo que autorizo y firmo con los testigos de mi asistencia segun derecho. Antonio Olivera, José Simon, de assa, Antonio Rodriguez.

En d'ho dia, mes y año, estando en el parage nombrado el Paso del Rio de Santa Clara, à efecto de remedio los medidas y posecion que corresponde a los ciudadanos Valentin Cota, Leandro Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Rafael Valdez y Vicente Felis, del citio nombrado Santa Clara previas los requisitos de ley y estando ante mio los testigos de asistencia, los oficiales medidores los cordeleros y yo el ciudadano Mejicano Antonio Olive-
17 ra y se medir un cordel que contenia cincuenta varas el cual fue examinado y reconocido y aciendo á sus estremos unos saucos de madera y por mi disposicion se tiro el cordel rumbo al este comensando

des de la orilla del rio adonde se clabo un palo en señal de mojonera y abiendo medido dos y media leguas remato la medida en la loma de en medio que este en la orilla del camino real del conejo en dondé se clabo un palo en señal de mojonera, en segunda y por mi disposicion setiro el cordel rumbo al sur y habiendose medido tres leguas por sobre del llano remato la medida en la orilla del mar en medio de dos esteros en cullo lugar se clabo un palo en señal de mohonera, encon'te y por mi disposicion setiro el cordel por sur del llano y orilla del mar rumbo al noroeste y habiendose medido tres leguas remata la medida en la bo ca del rio en cuyo lugar esta una sienega y se clabo un palo en señal de mojonera y por ultimo setiro el cordel per sobre del yano y orilla del rio rumbo al norte y abiendose medido uno y medio legua remato la medida en donde se comengo y le concludero las remedidas de este citio a satisfacion de los interesados lo que pongo por diligencia que autorizo y firmo con los testigos de asistencia.

ANTONIO OLIVERA,
JOSÉ SIMON ODONYU,
ANTONIO RODRIGUEZ,

Certificio que la presente copia ha sacado fielmente a la letra de su original a que me refiere.

San Buenaventura, O'bre 1o de 1840.

ANTONIO OLIVERA, *So. Into.*

JOSÉ SIMON ODONYU.

18 Sello tercero, dos reales. Habilitado provicionalmente por la aduana maritima de Monterey para los años de 1839 y 1840.

ALVARADO.
ANTONIO MARIA OSIO.

Filed in office Dec. 29th, 1852.

GEO. FISHER, *Sec'y.*

19

20 *Translation of title.*

Citizen Juan B. Alvarado, governor of the free and sovereign State of Upper California, and president of the most excellent deputation erected into a constitutional congress:

Whereas citizens Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Feliz, have sought leave to settle with their families and property in the lands of the river of Santa Clara, whose extent and boundaries will be marked on the map which for that purpose the alcalde of this municipality shall form, and in virtue of the faculty which the congress of the State conferred on the government in resolution of the 20th instant, to issue, provisionally, the proper documents to those persons who may desire to occupy these possessions.

I have granted the afore-mentioned citizens the occupation of said lands under the following conditions:

1st. They shall present themselves with this order to the municipal authority of Santa Barbara, who will designate the places on which they may settle.

2. Said authority will order a map or plan to be made of the lands designated, and will transmit it to this government when ready.

This is given in the ex-mission of Santa Barbara on the 22d of May, 1837.

(Signed) JUAN B. ALVARADO.
(Signed) VICTOR PRUDHON,
Secretary ad interim.

21 I certify the foregoing to be a true and correct translation from the original on file in this office in case No. 225, Valentin Cota *et al.*

GEORGE FISHER,
Secretary.

Filed in office May 10th, 1852.

GEORGE FISHER,
Secretary.

22 *D.—Translation of juridical possession.*

Stamp third, two reales. Provisionally authorized by the maritime custom-house of Monterey for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTO. MARIA OSIO.

{ Maritime custom-house of Monterey. }

To the justice of the peace of Santa Barbara:

Citizens Valentin Cota, and Leandro Gonzalez, Salvador Valenzuela, José Maria Valenzuela, Rafael Gonzalez, Vicente Pico, Rafael Valdez, and Vicente Feliz, in the place of the river of Santa Clara, before your honor present themselves, that you may have the goodness to give them the possession of the place which they are occupying, which is shown by the map which they duly transmit to be in the limits of the river of Santa Clara.

They therefore pray you will be pleased to attend to this their petition, for in it they hope to receive favor and grace.

Santa Barbara, September 23d, 1840.

For himself, and in the name of all interested.
(Signed) RAFAEL GONZALES.

SANTA BARBARA, *September* 23*d*, 1840.

The parties interested in this petition will understand that they must be ready on the 30th day of February to receive the possession which they request. Citizen Antonio Olvera, first justice of the peace of this municipality, thus ordered, decreed, and signed.

(Signed) ANTONIO OLIVERA.
(Signed) JOSÉ O. DOUGA,
Secretary ad interim.

23 In the presidio of Santa Barbara, on the twenty-eighth day of the month of September, one thousand eight hundred and forty, in compliance with the request made by citizens Valentin Cota, Leandro Gonzalez, Rafael Gonzales, Salvador Valenzuela, Rafael Gonzalez, José Manuel Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Feliz, that the corresponding possession should be given to them of the place known by the name of Santa Clara, granted by the government of this department, and there being no proper professional lawyer who ought to appear to remeasure the said lands, I, the first justice of the peace, citizen Antonio Olivera, did so in entire conformity with the measurements first made, the map of which is attached to the espediente.

I and my assisting witnesses will go to the said place and proceed to give the possession referred to, conforming to the title which was granted them by the superior government of this department, dated May 22nd, one thousand eight hundred and thirty-seven. I, the said justice of this municipality, thus ordered, decreed, and signed, with the assisting witnesses.

(Signed) ANTONIO OLVERA.

Ass't'g witnesses:

(S'g'd) JOSÉ SIMON O. DONDAGA.

(S'g'd) ANTONIO RODRIGUEZ.

In the place referred to, and on the same day, month, and year, I, the proper magistrate for the performance of these official acts, appointed two surveyors and two rope-bearers, who, notified of
24 their appointment, which they accepted, promising under oath to discharge faithfully the duties of their office, which I authenticate and sign with my assisting witnesses according to law.

(Signed) ANTO. OLIVERA.

Asst'g witness.

(S'g'd) JOSÉ SIMON O. DOUDYN.

(S'g'd) ANTO. RODRIGUEZ.

In said day, month, and year, being in the place called the Paso of the river of Santa Clara for the purpose of verifying the measurements and possession which correspond to citizens Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Feliz, of the place named Santa Clara, the legal requisites having been previously complied with, and being present the assisting witnesses, the surveyors, the rope-bearers, and I, the magistrate citizen, Antonio Olvera, I caused to be measured a cordel, which contained fifty varas, and it was examined and recognized, and the stakes tied to its extremities. Then, by my direction, drawing the cordel to the east from the bank of the river, where a stake was driven as a bound, they measured two and a half leagues to the hill in the middle, (La Loma de en Medio,) on the side of the main road of the Conejo, where a stake was driven as a bound.

Thence, and by my direction, the cordel was drawn southerly over the plain three leagues to the seashore, between two esteros, (creeks,) in which place a stake was driven as a bound.

In continuation, and by my order, the cordel was drawn over the plain, and in the seashore northwest, three leagues to the river, where there is a marsh, (cienega,) and a stake was driven there as a bound.

And lastly, the cordel was drawn over the plain and bank of the river north one and a half leagues to the place of beginning.

And the measurements of this place were concluded to the satisfaction of the parties interested, which I make of final note of, and authenticate and sign with the aforesaid witnesses.

(Signed) ANTONIO OLIVERA.

Ass't witnesses.

(Signed) JOSÉ SIMON O. DOUYA.

(Signed) ANTO. RODRIGUEZ.

I certify that this is a certified and literal copy of the original ot which I refer. San Beunaventura, October 1st, 1840.

(Signed) ANTONIO OLIVERA.

(Signed) JOSÉ SIMON O. DOUYA,
Secretary ad interim.

I certify the foregoing to be a true and correct translation from the original on file in this office, in case number 225, Valentin Cota *et al.*

GEORGE FISHER, *Secretary.*

Filed in office May 10, 1852.

GEORGE FISHER, *Secretary.*

Opinion of the Board.

VALENTIN COTA *et al.* *vs.* THE UNITED STATES. } For the place called Rio de Santa Clara, in Santa Barbara county.

The petitioners claim under document, the signatures of which are duly proved, of which the following is a translation:

Citizen Juan B. Alvarado, governor of the free and sovereign State of Upper California, and president of the most excellent deputation, erected into a constituent congress:

Whereas citizen Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Rafael Valdez and Vicente Felez, have sought leave to settle with their property and families on the lands of the river of Santa Clara, whose extent of boundaries will be marked on the map, which for that purpose the alcalde of this municipality shall form, and in virtue of the faculty which the congress of the state conferred on the governmental resolution of the 20th instant, to issue provisionally the proper documents to those persons who may desire to occupy these possessions, I have granted the aforesaid citizens the occupation of said lands under the following conditions:

1st. They shall present themselves with this order to the municipal

authority of Santa Barbara, who will designate the place on which they may settle.

2d. Said authority will order a map or plan to be made of the lands designated and will transmit to the government when ready. This is given in the ex-mission of Santa Barbara, on the 22d of May, 1837.

(Signed) ALVARADO.
VICTOR PRUDON,
Secretary ad interim.

27 Judicial possession of a portion of land within said river Santa Clara was given under this concession September 28th, 1840.

The terms of this document are such as to indicate an intention to give a mere temporary occupation of the land, rather than a grant of the title, and it was clearly anticipated that the parties should again petition to the government and present anew the merits of their application if they desired to become the owners of the property, under the document, in my opinion, indicate an intention to grant to the eight individuals named therein in *saledo* the lands which they might occupy under it.

In its true spirit and meaning, it is a permission to eight individuals to settle on the river Santa Clara, at such place as the authorities of Santa Barbara might designate. It being contemplated that each individual of them who might avail himself of the privilege would subsequently apply under such rules as then might be in force for a grant of the particular portion of land which he might occupy.

No such application appears to have been made by any of the claimants. I greatly doubt whether under the most liberal view of the meaning and effect of the terms of this instrument, in connection with the proofs in the case, the claimants, or any one or more of them, could be regarded as having established a right, either legal or equitable, in the property at the time of the making of the treaty of Guadalupe Hidalgo.

28 But under the view which we take of another point in the case, it is unnecessary to rest the decision on a construction of the terms of the grant. It will be observed that the document above recited does not purport to be a grant under the colonization law and regulations of Mexico, nor is it made under the authority of the Mexican nation.

It purports to come from the free and sovereign State of Upper California, and to be issued in the name of that sovereignty, by the governor thereof, by virtue of authority conferred on him by the congress of said state. The new sovereignty had its origin in those troubles, at times when the Mexican nation was distracted by dissentions, revolt and rebellion. After the death of Gov. Figueroa, in September, 1835, Man'l Chico was sent from Mexico to act as political chief of the Californias. In July of the same year he was expelled from the country by the Californians, and Nicholas Gutierrez and the Mexican, his second in military, assumed the duties of the office.

About this time intelligence reached the country of the abolition of the federal system in Mexico and of the success of the revolution in Texas. Exasperated by the former, and encouraged by the latter, the

inhabitants of California, both native and foreign, united in an effort to overthrow the existing government.

The revolutionary forces were successful. The capital was taken by storm, Gutierrez and his Mexican officers were expelled from the country, and the insurgents assumed the administration of the government.

On the 9th of November of the same year the plan of the new government was formed and contained the following articles:

1. Upper California is declared to be independent of Mexico, until the re-establishment of the federal system, adopted in 1824.

2. Said California is erected into a free and sovereign State, with a congress to dictate the particular laws for the country, and to elect the other supreme powers, the present most excellent deputation being declared constituyent.

This plan or basis was proclaimed, and the new government of the free and sovereign State of Upper California organized the department at Santa Barbara, and declared itself a constituent congress. The municipal authorities gave in their adhesion to the new government. The excitement of the revolution subsided and the new officers, with Alvarado at their head, a civil governor, proceeded to execute the functions of their respective offices.

The Californians having long complained of the indignity of having officers sent from Mexico to rule over them and of the real or fancied oppression which they had suffered at their hands, they had often before revolted against these local officers, but never until now had declared against the Mexican government or sought to establish an independent nation, in establishing the free and sovereign State, under the plan of 1836.

They repudiated all allegiance to Mexico, and assumed the position of an independent sovereignty. Practically, however, the position of an independent nation was of short duration. In the archives of California few records can be found of public acts done in the name of the free and sovereign State of Upper California.

They had accomplished the object of expelling rulers, who had been sent to govern them as a distant province, and of giving the reins of the local government into the hands of the native Californians; further than to accomplish this object, they seemed to have had no desire to separate their connection with Mexico, and almost immediately afterwards we find the government administered by them in the name of the Mexican nation.

In 1838 an amicable arrangement was had between Mexico and the authorities of California, and finally Alvarado was recognized as the constitutional governor of the department in the name of the Mexican nation; although without his commission, the subsequently recognition of his authority seems to have been regarded as confirming his proceedings and sanctioning his decisions.

The granting of the national domain is one of the highest acts of sovereignty. The grant under consideration (if grant it can be considered to be) is the act of the free and sovereign State of Upper California, in her character of an independent nation, assuming to grant

territory which both before and since was the undisputed demesne of Mexico. It is a grant issued by a revolutionary government
31 in hostility to that of the nation of which it was a constituent part.

Under the recognized rules of international law, if an attempted revolution be successful, and the internal change in the constitution of the State is finally confirmed by the event of the contest, the public domain passes to the new government.

If, on the other hand, such revolution is followed by the restoration of the ancient order of things, both public and private property not actually confiscated reverts to the original proprietor on the restoration of the legitimate government.

The natural domain not actually alienated by any intermediate act of the State returns to the sovereign along with the sovereignty, and when, during the existence of a revolutionary government temporarily formed, the public domain is alienated by it to its own citizens.

The legitimate sovereign, on the restoration of his "own" authority, may annul or confirm such alienation as to him shall seem proper.—(Wheat. International Law, 63, 64, 65, 441.)

A transfer of land by treaty to another sovereign, by a government *de facto*, would be good, notwithstanding the granting authority should be superceded by the restoration of the former sovereign.

The authorities ruling in the name of the free and sovereign State of Upper California scarcely aimed at the dignity of a govern-
32 ment *de facto*. The claim now under consideration is the only one purporting to be based on a grant issued in the name of that new political organization which I have been able to find in the archives of this commission.

The action of the authorities, in the name of the new and sovereign State, independent of Mexico, seems to have been relinquished by themselves almost as soon as formed, and the organization passed quietly out of existence, leaving the document on which the claim is based almost the solitary evidence which remains of its existence; as to this or any other disposition of the public domain, made in the name of the new State, and by its officers, there is nothing presented before us which indicates a ratification of the title of the grantee by the Mexican government after the existence of the former ceased, and the full power of the latter was entered.

The giving of possession subsequently by an alcalde could not have the effect of giving validity to a grant issued without authority, and which could become valid only by the recognition of the granting power. The eighth section of the act of March 3rd, 1851, limits the jurisdiction of this commission to lands claimed by virtue of any right or title derived from the Spanish or Mexican government.

A grant issued by the free and sovereign State of Upper California is not within this description, and if shown even to be valid to pass title to the grantee, resting much on the authority by which it
33 was issued, this commission could not, under the law, enter a decree of confirmation not being derived from the Spanish or Mexican government.

It would not be within the class of cases to which our power is ex-

tended by the act of Congress. A grant made by the revolutionary government, as before stated, could, on the restoration of the power of the legitimate national authority, become valid only in the recognition of the latter. Under the law of March 3rd, 1851, the burden of proof is on the claimant to show that the title under which he claims is derived from the authority of Mexico or Spain; and as Mexico was under no obligation to recognize title in an individual citizen to known lands, claimed under a grant emanating from known subjects, in the name of a free and sovereign nation, organized within known territory, and hostile to her authority.

Proof by the claimant of the recognition of Mexico after the restoration of her authority is indispensable to a decree of confirmation; without this it is, as it purports to be, a grant of the free and sovereign State of Upper California, and not a title derived from the Mexican government, and consequently is not within the class of cases which the law has authorized this commission to confirm.

Regarding the evidence insufficient for this purpose, we must enter a decree rejecting the claim Rejected.

Filed in office October 31st, 1854.

GEO. FISHER, *Secretary.*

34 *Decree.*

VALENTIN COTA *et al.*
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is not valid; and it is therefore decreed that their application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office October 31st, 1854.

GEO. FISHER, *Secretary.*

Order.

And it appearing to this satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

35

36 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-five pages, numbered from 1 to 25, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same was founded, on file in this office in case No 225 on the docket of the said board, wherein Valentin Cota *et al.* are the claimants, against the United States, for the place known by the name of "Rio de Santa Clara."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twenty-fifth day of May. A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Filed June 6th, 1855.

C. E. CARR, *Clerk.*

37

38 *Notice of appeal.*

United States district court for the southern district of California.

VALENTIN COTA, LEANDRO GONZALES, RAFAEL GONZALES, SALVADOR VALENZUELA, VICENTE PICO, RAFAEL VALDEZ, and VICENTE FELIS, appellants, *vs.* THE UNITED STATES.	Notice of intention to prosecute the appeal from the board of United States land commissioners

Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Felis, claimants for lands on the Rio de Santa Clara, situate in the county of Santa Barbara, in the southern district of California, hereby give notice of their intention to prosecute an appeal from the decision of the board of commissioners in their claim for the said lands, which claim was presented to the said board of commissioners, and by them rejected, their claim being that which is numbered on the docket of said board of commissioners No. 225, the transcript whereof is filed in this office, is numbered No. 231.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellant.

Filed July 12th, 1855.

C. E. CARR, *Clk,*
By A. H. CLARK, *Deputy.*

39

40 *Petition for review.*

To the honorable the United States district court for the southern district of California:

VALENTIN COTA, LEANDRO GONZALES, RAFAEL GONZALES, SALVADOR VALENZUELA, VICENTE PICO, RAFAEL VALENZUELA and VICENTE FELIZ, appellants, *vs.* THE UNITED STATES, appellees.	Petition on appeal from the United States commissioners.

The petition of Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez and Vicente Felis, respectfully shows to this honorable court:

That on the tenth day *day* of May, 1852, they filed a petition before the United States board of commissioners "to ascertain and settle private land claims in California," when sitting as a board, asking for a confirmation of the tract of land granted to them on the Rio de Santa Clara, in the county of Santa Barbara, by Juan B. Alvarado, governor of California, on the 22d day of May, 1837, as more particularly described in the grant, record of juridical possession, and map, copies of which were filed with the said petition, and of which the originals were afterwards produced and duly proved before said commission.

That afterwards, to wit, on the 31st day of October, 1854,
41 the said board of commissioners decided upon the validity of the petitioners' said claim and rejected it.

That on the sixth day of June, 1855, the transcript of the proceedings in this case before the said board of commissioners was filed in the office of the clerk of the United States district court for the southern district of California, and that a notice of the intention of these claimants to prosecute an appeal from the decision of the board of commissioners in their claim for the said lands was filed in the office of said clerk on the twelfth day of July, 1855.

The petitioners further show that the lands claimed are situate in the county of Santa Barbara, and in the southern district of California.

Your petitioners pray that the transcript of the report of the said board of commissioners on the claim presented to them as aforesaid, and the documentary evidence and testimony of witnesses on which it was founded, which is filed with the clerk of this court, may be held and considered as a part of this petition; and your petitioners, appealing from the said decision of the said board of commissioners, present this petition to the honorable the district court for the southern district of California, being the district court of the district in which the land is situated, and they pray this honorable court to re-

view the said decision of said board of commissioners, and to reverse it, and to confirm their title to the said lands.

HALLECK, PEACHY & BILLINGS,
Atty's for Appellants.

42 Filed July 12th, 1855.

C. E. CARR, *Cl'k*,
By A. H. CLARK, *Deputy*.

Summons.

UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to Pacificus Ord, attorney of the United States for the southern district of California, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California, on the twelfth day of July, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez, and Vicente Felis, praying the said court to review, upon the grounds therein set forth, the decision of rejection by the U. S. land commissioners appointed to ascertain and settle private land claims in the State of California, of their claim for a tract of land on the Rio de Santa Clara, in the county of Santa Barbara, which said claim was presented to the commissioners and was by them rejected on or about the 31st day of October, A. D. 1854, and that you are required to appear at said court, in said city, within ten days after the
43 service thereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that the plaintiff will apply to the court for the relief demanded therein.

In witness whereof I have hereunto set my hand and
[SEAL] affixed the seal of said court this sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid.

C. E. CARR, *Cl'k.*

Rec'd August 16th, 1855.

EDWARD HUNTER,
U. S. Marshal.

I served this summons, along with the proper copy of the petition, upon P. Ord, att'y of the U. S., by delivering to him, in person, a

true copy at Los Angeles, in the southern district of California, on the 20th day of Aug., A. D. 1855.

EDWARD HUNTER,
U. S. Marshal.

Sworn to and subscribed before me this 20th Aug., 1855.
C. E. CARR, *Clk.*

Filed.

44 *Answer.*

In the district court of the United States for the southern district of California.

LOS ANGELES COUNTY,
State of California:

VALENTIN COTA, LEANDRO GONZALES, RAFAEL GONZALES, SALVADOR VALENZUELA, VICENTE PICO, RAFAEL VALDEZ, and VICENTE FELIS, appellants, *vs.* THE UNITED STATES, appellees. } No. 231.—Transcript No. 225.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, on behalf of the United States, to the petition for review of Valentin Cota *et al.*, praying that the decision of the board of commissioners upon their petition claiming a tract of land on the river Santa Clara, in the county of Santa Barbara, State of California, may be reviewed and reversed, and their title to said land confirmed.

And the said attorney, answering said petition on behalf of the United States, denies generally all and singular each and every allegation in the said petition contained, except such as are expressly admitted.

And the said attorney, further answering, says, that he admits that on the 10th of May, 1852, the said claimants, (with José Maria Valenzuela,) filed a petition before the U. S. board of commissioners to ascertain and settle the private land claims in California, when
45 sitting as a board, asking for a confirmation of the tract of land alleged to have been granted to them, (and the said José Maria Valenzuela,) on the rio de Santa Clara, in the county of Santa Barbara, by Juan B. Alvarado, governor of California, on the 22d day of May, 1857, as more particularly described in the alleged grant, records of juridical possession, and map, copies of which were filed. That afterwards, to wit, on the 31st day of October, 1854, the said board of commissioners decided upon the validity of the said claim and rejected it; that on the 6th day of June, 1855, the transcript of the proceedings in this case before said board of commissioners was filed in the office of the clerk of the United States district court for the southern district of California; and that a notice of the intention of the said claimants to prosecute an appeal from the decision of the board of commissioners in their claim for said lands was filed in the

office of the said clerk, on the 12th day of July, 1855; and that the said lands claimed are situate in the county of Santa Barbara and in the southern district of California, as alleged in said petition for review.

And the said att'y of the U. S., further answering, denies that the said claimants have any valid right, title or claim to said tract of land.

And the said attorney of the United States, in pursuance of the provisions of the act of Congress approved 3rd of March, 1851, entitled, "An act to ascertain and settle the private land claims in the State of California," herein fully and distinctly sets forth
46 the grounds on which said claim is invalid, to wit:

I. That the said alleged grant of Juan B. Alvarado, the alleged governor of California, was made in violation of 4th article of the colonization law of Mexico of the 18th of August, A. D. 1824, in this: that the land granted as alleged by claimants was and is within ten leagues of the sea-coast, and that there is no evidence shown by claimants that the supreme executive power of Mexico previously approved of the colonization of the public lands in Upper California lying within ten leagues of the sea-coast; and it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

II. That at the date of the said alleged grant the said land claimed as aforesaid was occupied and in the possession of the missions of Upper California, and it was held and occupied particularly by the mission of San Buenaventura, and could not therefore be colonized.

III. That the said grant has not the conditions required by, and is not made in entire conformity with, the laws of Mexico of the 18th of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico of 21st November, A. D. 1828.

IV. That the said petition for review does not set forth fully the nature of the claim and the names of the original and present claimants, and it does not contain a deraignment of the claimant's title.

V. That Juan B. Alvarado, calling himself the governor of the free and sovereign State of Upper California, and president of the most excellent deputation, had no lawful authority on the 28th of May,
47 1837, to grant the land claimed. That the pretended grant of said date is not upon stamped paper. That it purports to be a temporary or conditional permission or license to occupy lands of the river Santa Clara. That it contains no description of the locality, extent and boundaries of the land pretended to have been granted. That it was not made in common as pretended. That it is vague, indefinite, uncertain and void.

VI. That the claimants fail to show that they performed the conditions of the said pretended grant or license. That they fail to show a map or plan of the lands made by the proper municipal authority designating the land upon which they should settle. That they fail to show that they presented themselves to such authority with said pretended grant or license, asking that the places where they might settle should be designated.

VII. That there is no evidence that the said claimants with their

families ever settled upon, occupied, improved and cultivated places upon the river Santa Clara designated by said municipal authority.

VIII. That the pretended juridical survey and possession of the 28th or 29th of September, 1840, of the land pretended to have been granted as aforesaid was not made by the proper municipal authority having jurisdiction of the subject matter. That it was not made according to the said pretended grant. That it was not made according to law. That there is no evidence that Antonio Olivera
48 was a justice of the peace of Santa Barbara on or about the 28th or 29th of September and the 1st of October, 1840. That the pretended testimonial of juridical survey and possession of said land is not executed upon the lawful stamped paper. That it is not executed and authenticated according to law. That it is vague and indefinite and void.

IX. That the said claimants fail to show any approbation or confirmation of the said pretended grant by the territorial deputation or departmental assembly of California, or the supreme government of Mexico.

X. And that they fail to show a definitive title for the said land claimed as aforesaid.

And the said claimants not having any valid right or title to the said land claimed by them as aforesaid, the lawful right and title in and to the same was acquired by and it now belongs to the United States by virtue of the treaty of peace, friendship, limits and settlement with the republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2nd, A. D. 1848.

Wherefore, the premises considered, the said attorney, respondent on behalf of the United States, prays that the said claimants, Valentine Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez and Vicente Felis, may be served with copies of the answer, and that after due proceedings this hon. court will decree the said claim of the said petitioners for said land to be invalid, and to decree costs against them, and general relief.

P. ORD,
49 *Attorney of the United States for the southern district of Cal'a.*

Filed August 23rd, 1855.

C. E. CARR, *Clerk.*

Whereupon the following order was made in open court, to wit:

U. States Dis't Court, south'n dis't of California, special term, September, 1855.

Order to take testimony.

Los Angeles, *October 9th*, 1855.

Valentin Cota *et al.*, appellants,
vs.
The United States, appellee. } No. 231.—Rio de Santa Clara.

On motion of H. W. Halleck, att'y for appellants, it is ordered that additional testimony may be taken by either party in the above entitled cause.

50 *Cause set for trial.*

United States district court, south'n dist. Cal'a.—Regular December term, 1855.

DECEMBER 24*th*, 1855.

VALENTIN COTA *et al.*, appell'ts, *ads.* THE UNITED STATES, appellees. } No. 231.

By consent of parties this case set for hearing on Monday next.

Order of continuance.

United States district court, south'n dist. of California.—Regular December term, 1855.

DECEMBER 31*st*, 1855.

VALENTIN COTA *et al.*, app'l'ts, *vs.* THE UNITED STATES, app'ees. } No. 231.

This cause was called, and on motion and affidavit of attorney for appellants, filed herein, was continued.

51

52 *Motion of app't for continuance.*

In the district court of the United States for the southern district of California. December term, 1855.

VALENTINE COTA appel'ts, *ads.* THE UNITED STATES, app'ees. } No. 231.

The appellants, by their counsel, move for an order of continuance on the above case until the next term, and in support of the motion refer to the annexed affidavit of Frederick Billings.

By their att'ys, HALLECK, PEACHY & BILLINGS.

Frederick Billings, on oath, says that he is of the firm of Halleck, Peachy & Billings, the attorneys of the claimants in the case of Valentin Cota *et al.*, appellants, *ads.* the United States. appellees, No. 231; that Juan B. Alvarado, formerly governor of California, is a material witness for the claimants in said cause, without whose testimony they cannot safely proceed to trial; that the grant under which the claimants claim was issued by said Alvarado on the 22d of May, 1837, in the capacity of governor of the free sovereign State of Upper California; that one ground upon which the claim was rejected by the land commissioners was that the sovereignty of which Alvarado was the head at the time the grant was made did not reach the dignity of a *de facto* government, and that grants emanating from it
53 could not be confirmed by the commission under the act to settle private land claims in California; that the testimony of

said Alvarado, relating to the said independent government, is material and necessary; further that the testimony of said Alvarado is necessary to prove that at the time of issuing the said grant he directed the alcalde to give juridical possession of the precise land which was given afterwards by the alcalde to the claimants; that this direction, in connection with the grant, map, and judicial possession, will make clear the identity and capability of segregation of the land; that this direction they expect to prove by said Alvarado, and this testimony can be supplied by that of no other witness; that never since issue was joined in this case has the said Alvarado, to the information and belief of the affiant, been within the jurisdiction of the process of this court by which his attendance could be compelled; that he has promised to attend the next term of this court, to be held at Monterey, at which time his deposition can be taken.

FREDERICK BILLINGS.

Subscribed and sworn to this 3d day of December, A. D. 1855, before me.

C. E. CARR, *Cl'k.*

Filed Dec. 31st, 1855.

C. E. CARR, *Cl'k.*

54 *Depo. of Anto. Olivera.*

Deposition of Antonio Maria Olivera, a witness on behalf of the claimants and appellants, taken before C. Sims, United States commissioner for the district of California, at the office of the United States district clerk for the southern dist. of California, in the city of Los Angeles, on Saturday the 10th day of January, A. D. 1857, at 1 o'clock p m., by consent and at the request of the respective attorneys of the parties, to be used as testimony on behalf of the appellants and claimants in a certain cause now pending in the United States district court for the southern district of California, being case No. 231 on the docket of said court, wherein the United States are appellees, and Valentin Cota *et al.* are appellants.

Present: P. Ord, U. S. dis't att'y, and Halleck, Peachy & Billings, esq's., att'ys on behalf of app'l'ts and claimants.

VALENTIN COTA *et al.*, app'l'ts, *vs.* THE UNITED STATES, app'lees. } No. 231.—Rio de Santa Clara

Antonio Maria Olivera, being duly sworn on the part of the appellants, deposes and answers as follows:

Quest. What is your name, age, and place of residence?

Ans. My name is Antonio Maria Olivera; I am 71 years of age, and reside in San Buenaventura.

55 Quest. Do you know the tract of land called Rio de Santa Clara, claimed in this case by Valentin Cota and others? If yea, how long and in what manner have you known it?

Ans. I know the land claimed in this case. I was born there on

the land, and have known it well and constantly, passing over it all my life.

Quest. In 1840 what office did you hold in California?

Ans. I was justice of the peace at Santa Barbara.

Quest As such officer, did you give juridical possession of the land claimed?

Ans. I did.

Quest. Was the land of which you gave juridical possession at that time in the possession or occupation of any one? If so, whom and how?

Ans. It was not in the possession of any one at the time I gave possession; but the moment I gave juridical possession the claimants went on it immediately to live.

Quest. State if the claimants have continued to live on the land since 1840; and, if so, in what manner.

Ans. They have continued to live on it from that time up to the present. They have houses and corrals, and have had all the time from 1840, and they have likewise been sowing grain from that time to the present. They have always had horses and cattle on the same during all the time. They have had their families there, but at the present they have not. Leandro Gonzales, with his family, lives there now.

56 Quest. Is the road called El Camino Real para El Conejo a well-known road?

Ans. It is a well and wide-known road.

Quest. State if the hill called "Loma de la Medio" is a well-known hill.

Ans. It is well known on the right hand side of the road coming east.

Ques. State if the two ponds, or "dos esteros," near the sea-shore, are well-known spots or localities, and if so, how far apart are they?

Ans. I know the two ponds. They are well known. At times there is dry land between them. They are close together.

Quest. State if the "cienega," at the mouth of the river, is a well-known locality.

Ans. It is a well-known place.

Quest. State if at the point of beginning on the bank of the river there was any monument or mark set up.

Ans. A stake was set up there as there was at all the 4 corners.

Cross-examination by Mynor Norton, acting as U. S. Dis't. Att'y.

Quest. State the names of the different persons to whom you gave juridical possession of this land.

Ans. Valentin Cota, Rafael Valdez, Rafael Gonzales, Salvador Valenzuela, Vicente Felis, and Leandro Gonzales. I do not
57 recollect any others. They were all present when I gave possession of this land.

Quest. Who assisted you in giving possession of this land?

Ans. Antonio Rodriguez was with me at the time, and one of the same ranch, to wit, Rafael Valdez, was also with me.

Quest. Was there any one else present, adjoining proprietors, or others, at the time you gave possession? and if so, what are their names?

Ans. José Ruis, who is now dead, was there present, representing the ranch of Collegnas.

Quest. Were there any persons cited by you as alcalde to appear there at the time you gave juridical possession? and if so, give their names.

Ans. I only called José Ruis, as he was the only person who had settled there.

Quest. Did you at the time know Juan Sanchez.

Ans. I did.

Quest. Where did he live at that time?

Ans. He lived in the garrison.

Quest. Was he not the owner of a rancho situated on the north of the lands of which you gave possession in this case?

Ans. As yet Juan Sanchez was not there.

Ques. What is the name of the rancho which is now occupied by Juan Sanchez?

Ans. I do not know.

Quest. What direction is the ranch now occupied by Juan
58 Sanchez from the rancho claimed in this case?

Ans. It is on the north, and adjoines the ranch in this case.

Quest. Do you know the rancho of San Pedro, claimed by José Chapman?

Ans. I do; it joins the ranch claimed in this case on the south side.

Ques. State how long José Chapman has occupied that rancho?

Ans. I cannot tell. I have known of him being with his father-in-law, but not of his being in San Pedro.

Quest. Do you know of the family of José Chapman ever occupying the ranch of San Pedro?

Ans. I do not.

Quest. Do you know Antonio del Valle?

Ans. I do.

Quest. Did you ever know of Antonio del Valle occupying the ranch of San Pedro?

Ans. I never knew nor saw him occupying it.

Quest. How far is the mission of San Buenaventura from this ranch claimed in this case?

Ans. A little more than a league.

Quest. What houses were on this tract of land at the time you gave judicial possession to Valentin Cota and others?

Ans. Only one house; there was a house of Leandro Gonzales, and from that they went on making other houses. Leandro Gonzales and his family, and his brother Rafael Gonzales, were living there at the time, also Rafael Valdez was living in this same house at
59 the time.

Quest. On what part of the rancho was this house situated?

Ans. On the southeast side of the river Santa Clara, near a little

table mound. The house was about two hundred yards from the river, there being not land *land* between that and the river.

Quest. Was there any other houses on the place?

Ans. No, there was not.

Quest. When you gave juridical possession to Valentin Cota and others, whom you have named, did you give the possession of the whole tract to all of them jointly, or did you give to each of them a distinct parcel of land?

Ans. I gave it to them all jointly.

Quest. How far is the rancho Colleguas from the land claimed in this case, and in what direction?

Ans. They are more than a half league distant from one another. It is in the direction of Conejo, on the east side.

Quest. How long have you known the rancho of Juan Sanchez?

Ans. A great many years; about 20 years.

Quest. Has Juan Sanchez, with his family, lived upon and occupied it during that time?

Ans. He has—now he is living in the mission; has been living there 2 or 3 years.

Quest. Who was the mayor domo of the mission of San Buenaventura at the time you gave juridical possession of the lands
60 claimed in this case to Valentine Cota and others?

Ans I do not remember.

Quest. Do you know Remundo Olivas?

Ans. I do.

Quest. Was ever mayor domo of the mission of San Buenaventura, if so, when?

Ans. I do not know.

Quest. At the time you gave juridical possession of the land claimed in this case did the cattle of the mission San Buenaventura run upon and occupy the lands of "Santa Clara river?"

Ans. No, I did not see them.

Quest. Since that time have the cattle of the mission run upon that land?

Ans. I do not know.

Quest. Do you know where the owners of the mission gave their rodeos at that time?

Ans. I do not remember at what place they gave their rodeos.

Quest. Do you know the lands lying between the river Santa Clara, on the road to Los Angeles, and the sea-shore?

Ans. I do know them.

Quest. Have not these lands always been considered as belonging to the mission of San Buenaventura?

Ans. I do not know; that would be according to the lines which the mission may have had.

Quest. Has not the mission always claimed those lands?

Ans. I do not know; but I do know that the mission claimed
61 that part of it on the east side of the river.

Quest. Did not Leandro and Rafael Gonzales and Salvador Valenzuela live on one corner of these lands?

Ans. I do not know; they live on the east side of the river, and never have moved from that place.

Quest. Do you know of there ever being any disputes between Leandro and Rafael Gonzales, and Salvador Valenzuela, and the administrators or owners of the mission, about the occupation or possession of these lands?

Ans. I do not know.

Quest. Do you know of Andres Pico and Juan Manzo visiting the mission of San Buenaventura, by order of the government, in 1845?

Ans. I do not know.

Quest. Do you know in what particular place or places the administrators or owners of the mission of San Buenaventura gave their rodeos?

Ans. I do not know.

Quest. Do you know Pacifico Sanchez?

Ans. I do.

Quest. Is Pacifico Sanchez an owner of lands adjoining the lands claimed in this case, and if so, how long has he owned and occupied such lands?

Ans. I do not know if he is owner of any lands there or not; he lives close to his father, and his father's name is Juan Sanchez.

62 Quest. Do the lands upon which Pacifico Sanchez lives adjoin the lands claimed in this case?

Ans. It is natural that they do, because they are close together.

Quest. How far do you live from the lands claimed in this case, and how far from the mission of San Buenaventura?

Ans. I live in the mission of San Buenaventura.

Quest. How far is the mission of San Buenaventura, where you live, to the house which you say is occupied by Leandro and Rafael Gonzales?

Ans. Near two leagues.

Quest. How long have you lived in that mission?

Ans. I was born there 1785, and have lived there, off and on, ever since.

Quest. Where did you live when you were not living at the mission?

Ans. I resided at Santa Barbara, at the garrison.

Examination by Halleck, Peachy & Billings, att'ys for appellant, resumed.

Quest. Do you wish to correct the answer you gave to the question on the second page of this deposition, which was this: "Was the land of which you gave juridical possession at that time in the possession or occupation of any one; if so, when and how?"

Ans. I wish to correct it, most assuredly. I did not understand it. Long before the juridical possession, Rafael and Leandro Gonzales lived in a house on the land which had been built long before.

63 I think Valdez and Valenzuela, two others of the claimants, lived there with the Gonzales, at times. At the time they lived there, before the juridical possession, they had their stock on the land; they had a reasonable quantity of stock on the land.

Quest. Did you know at the time of the juridical possession of any claim or claims of title affecting this land, or bordering on it, save the one you have mentioned of Ruis?

Ans. I knew of no other but Ruis.

Quest. Did you of the rancho of Juan Sanchez, at the time you gave juridical possession of the land claimed in this case?

Ans. I saw them looking about there, and afterwards they asked for the land. I did not know of the ranch of Juan Sanchez at the time juridical possession was given by me of this ranch. Juan Sanchez settled on his ranch one month after I gave juridical possession of the lands claimed in this case.

Quest. State how many years you were alcalde or justice of the peace, or occupying any other office under the government of Mexico?

Ans. I have only been employed as justice of the peace for one year. I have held no other office.

In answer to the question "Can you write?" the witness said "that he is old, and his hands tremble, and requests that he be per-
64 mitted to sign the cross."

his
ANTONIO MARIA + OLIVERA.
mark.

Sworn and sub'd to before me this 10th day of January, A. D. 1857.
C. SIMS, *U. S. Com'r.*

UNITED STATES OF AMERICA,
State of California, county of Los Angeles:

I, C. Sims, United States commissioner for the district of California, hereby certify that the foregoing deposition of Antonio Maria Olivera was taken before me, in accordance with the request and agreement of the said attorneys, at the United States district clerk's office, in the city of Los Angeles, State of California; that the said Antonio Maria Olivera was by me duly sworn according to law, as a witness in said cause, in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, was by him corrected as he desired, and was by him signed in my presence.

In testimony whereof I hereto set my hand and affix my private
[SEAL] seal (there being no seal of office) this 10th January, A. D. 1857.

C. SIMS, *U. S. Com'r.*

Filed this 10th January, 1857.

C. SIMS, *Cl'k,*
Pr. J. H. COLEMAN, *Dep'ty.*

65

66 *Depo. of A. Rodriguez.*

Deposition of Antonio Rodriguez, taken before C. Sims, United States commissioner for the district of California, at the United

States court-house, in the city of Los Angeles, on Monday, the 12th of January, A. D. 1857, at 4 o'clock p. m., on behalf of the appellants, by consent of and agreement of parties to be used in testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 231 on docket of said court, wherein the United States are appellees and Valentin Cota *et al.* are appellants.

Present: P. Ord, esq., U. S. att'y on behalf of the appellees, and Mess. Halleck, Peachy & Billings, on behalf of appellants.

VALENTIN COTA, appellants, *ads.* THE UNITED STATES, appellees. } No. 231. Rio de Santa Clara.

Antonia Rodriguez, a witness on behalf of the appellants, being duly sworn, deposes and answers as follows:

Quest. What is your name, age and place of residence?

Ans. My name is Antonio Rodriguez, am 49 years of age, and reside in the county of Santa Barbara.

Quest. Do you know the claimants in this case?

Ans. I do. They are named Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Pico, Vicente Felis and Rafael Valdez.

67 Quest. How long have you known them?

Ans. Upwards of thirty years.

Quest. Do you know the tract of land claimed by them called "Rio de Santa Clara;" if yea, how long have you known it?

Ans. I do. I have known the place since I was nine (9) years of age. My brother owns a ranch adjacent to the same. As a ranch I have known it since 1840. I mean that I have known the country thereabouts, and have known the ranch as a rancho since the year 1840.

Quest. Were you present when juridical possession was given of this land called "Rio de Santa Clara," by Antonio Olivera, as justice of the peace or alcalde; if yea, when was it, who were present, and to whom was the juridical possession given?

Ans. I was present, having been called as a witness of the juridical possession by Antonio Maria Olivera, acting as alcalde, and I acted as such witness. It was in the year 1840; upon the part or on behalf of the mission of San Buenaventura there was present Vicente Pico, mayor domo, who was sent by Rafael Gonzales, the administrador of said mission, and upon the part of the "Colleguas" there was present José Pedro Ruiz, and on the part of Don Juan Sanchez he himself (Juan Sanchez) was present with his title papers. There was no other adjoining proprietors present. The alcalde himself was

68 there, and the witnesses of assistance, who were myself and Simon O'Donohue. There were various other persons there from curiosity, looking on. Of the owners, Leandro Gonzales, Salvador Valenzuela, Valentin Cota, were present, as I recollect.

Ques. State what you know of the occupation or possession of this tract of land previous to juridical possession.

Ans. The persons that lived there previous to juridical possession were Rafael Gonzales, Leandro Gonzales, Salvador Valenzuela, and José Maria Valenzuela, four of the present claimants. I do not recollect anybody else living there; they had three houses contiguous to each other; there were also some temporary houses, which were at times occupied by the other claimants of the rancho when they came there, which houses are now in the same situation they were then. I mean by the houses now there in the same situation, only the three contiguous houses above mentioned. They also had a large quantity of horses, and cattle, and some mules; also land fenced and under cultivation.

Ques. State if all the claimants were at times on this tract of land previous to the juridical possession.

Ans. They were all frequently there, and had animals there.

Ques. State what you know of the possession, occupation, and cultivation immediately after the juridical possession.

69 Ans. After the juridical possession, Rafael Gonzales, Leandro Gonzales, and Salvador Valenzuela, and José Ma. Valenzuela remained upon the land, and annually made, sowed their crops upon the land, continuing also their animals on the rancho without intermission; these four had their families there.

Ques. State if the other claimants, besides these four, had stock on this tract of land after the juridical possession, and to what extent.

Ans. Of the other owners Valdez remained a short time with his stock, and the other three located themselves in different places.

Ques. Did those of the claimants who were mentioned as living on this tract of land, previous to the juridical possession, have their families on it?

Ans. They had their families there.

Ques. State, in continuance of what you have said about the occupation and possession, what you know of the same generally down to the present time.

Ans. The two Gonzales and the two Valenzuelas have continued to reside upon the ranch, sowing upon the lands, raising cattle and horses, up to the present time, and they have large families, and the number of houses have been considerably increased for their convenience.

Ques. Where is Simon O'Donahoe, the assisting witness at the juridical possession?

Ans. He is dead. I do not know the time; he died in Los Angeles.

70 *Cross-examined by M. Norton, acting U. S. Dis't Att'y.*

Ques. Are Vicente Pico and Rafael Gonzales, whom you stated in your direct examination were, the one mayor domo and the other administrador of the mission of San Buenaventura, at the time juridical possession was given, the same Vicente Pico and Rafael Gonzales whom you have named as two of the claimants in this case?

Ans. They are the same.

Ques. How long had they at that time been, severally, mayor domo and administrador of the mission of San Buenaventura, up to the time

juridical possession was given of the land in this case, and how long after that time did they continue to be such mayor domo and administrador?

Ans. I do not remember how long they had been before, or how long they continued to be thereafter.

Ques. Where did Vicente Pico and Rafael Gonzales live at the time said juridical possession was given?

Ans. Rafael Gonzales, as administrador of the mission of San Buenaventura, lived at the mission, but had his house at the river in Santa Clara, his family residing at the last mentioned house, taking care of the property and the animals, and Vicente Pico lived with his family in San Buenaventura.

Ques. How long did he continue to live there with his family in San Buenaventura after juridical possession was given of the
71 land in this case?

Ans. I do not remember the time.

Ques. How far is it from the mission building to the house occupied at that time by Rafael Gonzales?

Ans. The surveyors say it is three leagues scant.

Ques. Do you know the rancho occupied by Juan Sanchez, and if so, what is its name, how long has he occupied it, and what distance is it, and in what direction, from the land claimed in this case?

Ans. I know the rancho, but I do not know it has a name; he has occupied it since about the years 1838 or 1839. They are divided by the main road, on the "Camino Real del Conejo." Coming from Santa Barbara towards Los Angeles, the rancho of Juan Sanchez is on the left hand side of the said road del Conejo, that is, the north or north-east side.

Ques. Do you known the ranch called San Pedro; if so, how long have you known it, and in what direction from the land claimed in this case?

Ans. I know it from my early youth; the distance is something more than three leagues in a southerly direction from the lands claimed in this case.

Ques. Who has the ranch of San Pedro been occupied by since you have known it?

Ans. I first knew it in possession of the deceased José Chapman; since that time it has been considered as the lands of Santa Clara.

72 Ques. How long and in what years did Chapman occupy it?

Ans. I think he occupied it for a short time in 1838 or 1839; I am not positive.

Quest. When did José Chapman die, and did he leave any family?

Ans. I do not remember the year in which he died, and he left a family.

Quest. Where has his family lived since his death?

Ans. They have lived in Santa Barbara.

Quest. Do you know of the rancho of San Pedro ever been occupied by Antonio Del Valle; and if so, how long, and in what year or years did he occupy it?

Ans. I know that he occupied the same, but I do not recollect how long or in what year.

Quest. Did Del Valle occupy it before or after the occupation of José Chapman?

Ans. Del Valle occupied it before Chapman, and for a considerable time before; in 1837 Del Valle was still there, and I do not know how many years previous.

Quest. Who has occupied it since Chapman's death?

Ans. It has not been occupied by any one.

Quest. Where were the houses situated which you have spoken of in your direct examination as existing on the land claimed in this case previous to the time of juridical possession?

Ans. About two thousand yards from the Conejo road, within the boundaries of the rancho.

Quest. On which side and how far from the river?

73 Ans. they were on the south side of the river of Santa Clara, and distant therefrom about five hundred varas, some of the houses being nearer the river than that distance.

Quest. Have not the lands mentioned in this case always been claimed by the aministrator or owners of San Buenaventura?

Ans. I have never heard that they did.

Quest. Did not their cattle always run upon these lands?

Ans. At one time they did; but now the owners of the mission have no cattle. I delivered the last, by order of Gov. Pico, to José Arnas and Narciso Botello.

Quest. In what year did you deliver them?

Ans. I think it was in 1844.

Quest. Previous to this delivery by you, and after the juridical possession, did not the cattle of the mission run upon these lands?

Ans. There was one small rodeo upon the lands claimed in this case, called "Buen M."

Quest. In what year was that rodeo and who gave it?

Ans. The witness himself, with his servants, held the rodeo to collect all mission cattle and deliver them to the above named Arnas & Botello, by express order of the governor.

Quest. Do you not know of disputes between the administra-

74 dor, or owner or owners of the mission, and Leandro and Rafael Gonzales and Salvador Valenzuela about the occupation or possession of the lands claimed in this case?

Ans. I have only heard of a dispute about a place above mentioned called "Buen M."

Quest. Was that dispute at the time of the rodeo?

Ans. No; it was long subsequently and when the mission was owned by Doctor Poli. I don't remember in what year?

Quest. Where is this place called Buen M situated?

Ans. It is on the south side of the river Santa Clara, and near the sea-shore, and about three leagues distant from the houses of the Gonzales. The houses of the Gonzales are also on the south side of the river.

Quest. At the time of this dispute did not Poli claim these lands as a part of the mission and belonging to him?

Ans. He did claim the place called "Buen M," but the claimants in this case disputed it.

Quest. Do you know of Andres Pico and Juan Manzo visiting the missions of San Buenaventura, in 1845, by order of the government?

Ans. Yes, because the witness was with Andres Pico when they were putting a valuation upon the mission property.

Quest. Did they at that time have a dispute with the two Gonzales and Salvador Valenzuela about the title to these lands?

Ans. They did not.

75 Quest. Why did Pico and Manso, at that time, give these rodeos and count the mission cattle?

Ans. It took place in "Buen M." Also the mission held a rodeo in a place called the Laguna, more distant.

Quest. After the counting of the cattle what was said between Andres Pico and Leandro Gonzales relative to these lands?

Ans. Absolutely, I heard them say nothing.

Examination in chief resumed.

Quest. How long previous to the juridical possession had the two Gonzales and the two Valenzuelas and the family of the Valdez been on the land in question?

Ans. I think they went there in '37 or '38, when the ranch was founded, and have lived there up to the present time.

Quest. When you answered in reply to a cross-interrogatory that you had known the rancho called San Pedro from your youth up, did you mean anything more than that you knew a place called that name?

Ans. I wish to say that I have known the place on the side of the road going to my own rancho that has always been called San Pedro.

Quest. Do you mean to say that you knew of any title or claim of title to the place called San Pedro adverse to the title claimed by defendants in this case?

76 (Question objected to by dist. att'y.)

Ans. I did not intend to say any such thing; I have only known it as a place, but I never knew if any body had a title to it.

Quest. Has not this place included in the juridical possession given to the claimants in this case?

(Question objected by dist. att'y.)

Ans. It did not fall within the judicial possession.

Quest. Has it not always been claimed since by the claimants as part of their land called Rio of Santa Clara, and has not their stock run on it indiscriminately with other portions of the land included in the juridical possession?

(Objected to by dist. att'y.)

Ans. The owners have always claimed this place as part of their rancho, and their animals have always run upon the same as upon the other parts of the land.

ANTONIO RODRIGUEZ.

UNITED STATES OF AMERICA,
State of California, county of Los Angeles.

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of Antonio Rodriguez

was taken before me, in accordance with the request and agreement of the said attorneys, at the U. S. court-house, in the city of
77 Los Angeles, State of California, on behalf of the appellants; that the said Antonio Rodriguez was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and that of the said attorneys, and after having been by me carefully read to him and by him corrected as he desired, was by him signed in my presence.

In witness whereof I hereto set my hand and affix my pri-
[SEAL.] vate seal, (having no seal at office,) this 13th day of January, A. D. 1857.

C. SIMS, *U. S. Com'r.*

Filed this 12th January, A. D. 1857.

C. SIMS, *Cl'k*,
p. J. H. COLEMAN, *Dep'ty.*

78 *Depo. of J. M. Bonilla.*

VALENTIN COTA *et al.*, appellants,
vs.
THE UNITED STATES, appellee. } Case No. 231.

Deposition of J. Mariano Bonilla, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Tuesday, the 21st day of January, A. D. 1857, at 1 o'clock p. m. on said day, on behalf of the ———, by the consent and agreement of the attorneys of the parties to be used as testimony in a certain cause now pending in the U. S. dist. court for the southern district of California, being case No. 231 on the docket of said court, wherein Valentin Cota *et al.* are appellants and the United States are appellees.

Present: Halleck, Peachy & Billings, attorneys in behalf of the appellants, and P. Ord, U. S. D. att'y, in behalf of appellees.

Quest. What is your name, age, and place of residence; how long have you lived in California; what offices have you held, and in what capacitys have you been at times connected with the government of California?

Ans. My name is José Mariano Bonilla; am 51 years of age, and reside in San Luis Obispo, and have resided here since 1834, having come from the city of Mexico. I am by profession a lawyer. In the year 1836 I acted as secretary to the governors, Mariano Chico and Nicholas Gutierrez, of California. In 1836 and '7, when Al-
79 varado usurped the government of California, he solicited me to act as secretary, but which I refused to accept, notwithstanding, however, I did write in the office as secretary.

In 1843 and '4 I was secretary in the superior tribunal of justice, in Monterey. At different times in 1838 and '9 I was occasionally employed by the government as a private person, and also for a great

length of time, I have been alcalde in San Luis Obispo, sub-prefect, county judge, and district attorney, and county supervisor, &c.

Quest. When did the "free and independent government of California," as it was called, with Juan B. Alvarado acting as governor, begin and end, and what was the nature of that government?

Ans. It began in November, 1836, and ended in the latter part o 1838, as I think, when the commissioner, Andres Castillero, camf from Mexico to settle the difficulties between Mexico and California.

The nature of this government was a federal government, in opposition to a central government, Alvarado being opposed to the organic basis established by Mariano Chico. Alvarado, in this government, followed the established forms of the previous government, only modifying the proceedings for the obtaining grants of public
80 lands, not requiring so many requisites as was required by Figueroa and others, but making the proceedings more simple. After the difficulty was arranged by the commissioner, Alvarado continued on as he had begun.

The forms of the government, after the settlement of the difficulty, were the same as before, and Alvarado continued on as governor until the year 1843, at which time Micheltorene arrived.

Quest. Were grants of land made by Alvarado as governor before as well as after the settlement of the difficulty?

Ans. I do not know that he gave grants of lands before the difficulty was settled.

Quest. State what you know relative to the acts of Alvarado acting as governor; the acts previous to the settlement of the difficulty, to which you have referred, being recognized or not by the supreme government.

Ans. I know that they were approved. I know that all the different employees appointed by Alvarado before the arrival of the commissioner were confirmed by the commissioner, and that they continued in office. It was the understanding that, if the difficulty was arranged, all the previous acts of Alvarado would be approved. Castillero brought a new constitution, which was sworn to and accepted by the people.

Cross-examination by U. S. att'y.

Quest. Did not Alvarado, in his government, after the usur-
81 pation and up to the time of the arrival of Castillero, claim to be, and did they not act entirely independent of the authority of the Mexican nation?

Ans. Almost independent, but following the previous forms used by the previous government. I may say, independent they acted, but always following the usual forms of the previous government.

Quest. Did the government of California, after the usurpation and up to the arrival of Castillero, have any relation or intercourse, politically, with the Mexican government?

Ans. Yes; they had some. The Mexican government appointed Carlos Carrillo as governor of California, but Alvarado refused to acknowlege the appointment; and Alvarado sending despatches to Mexico, sta-

ting to the Mexican government that Carrillo was not a suitable appointment for California, setting forth in those dispatches other improvements that it would be well for the Mexican government to attend to in different branches of the government.

Carrillo assumed to act as governor in the southern part of California, particularly from Santa Barbara and south of that point, but all the time being opposed by Alvarado Carrillo continued to act in this manner from 4 to 6 months, all of which time there was a continued revolution. When Castillero arrived, there had been fighting during this time.

82 Quest. At the time of the settlement of the difficulties, when Castillero arrived, did Carrillo take any part in the settlement?

Ans. No; Carrillo remained at home rather in the character of a person arrested, whilst Castillero returned to Mexico, who brought back the arrangement that should be observed in the country, with the appointment of Alvarado as governor.

Quest. How do you know that it was understood between Alvarado and Castillero that, if the difficulty was arranged, all the previous acts of Alvarado would be approved by the Mexican government?

Ans. Because Castillero himself told me so; he offering to Alvarado to go to Mexico and obtain the same.

Quest. Was the approval ever obtained; and if so, when and how?

Ans. It was obtained when Castillero went to Mexico, and returned in 1838.

Quest. Did you ever see the approval by the Mexican government?

Ans. I saw no written document, but I witnessed the festivals which celebrated that act.

Quest. Is that all that you know of the approvals of the acts of Alvarado by the Mexican government during the time that he was at the head of the revolution?

Ans. This is all I know, except from what I heard. Castillero, when he returned, told me the acts were approved, as he was

83 my intimate friend, and I frequently conversed with him.

(All that part of the preceding answer which relates to what Castillero told the witness is objected to by U. S. att'y.)

Quest. Who was president of Mexico during the time of the revolution?

Ans. Gen'l Bustamente was president.

Quest. Was not this revolution at the same time of the revolution in Texas?

Ans. I do not know.

J. MAR'NA BONILLO.

Sworn to and subscribed before me this 21st day of January, 1857.

C. SIMS, *U. S. Com'r.*

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions, under

the acts of Congress, approved September 24, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court for the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of J. Mariano Bonilla was
84 taken before me on the 31st day of January, A. D. 1857, according to the agreement, and at the request of the attorneys of the said grantees, at the United States district court-house, in the city of Los Angeles, and State of California, in behalf of the appellants; that the said José Mariano Bonilla was by me duly sworn according to law as a witness in said cause, in the caption of this deposition mentioned; and, after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal (having no seal of office) this 21 day of January, A. D. 1857.

C. SIMS,
United States Commissioner.

Filed this 22nd January, 1857.

C. SIMS, *Cl'k*,
85 p. J. H. COLEMAN, *Dep'y.*

86 *Depo. of J. A. Carrillo.*

VALENTIN COTA *et al.*, appel'ts,
vs.
THE UNITED STATES, appel'e. } Case No. 231.

Deposition of José Antonio Carrillo, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Wednesday the 4th day of February, A. D. 1857, at 11 o'clock a. m., on said day, on behalf of the appellants by the ————, to be used as testimony in a certain cause now pending in the United States district dist. court for the southern dist. of California, being case No. 231 on the docket of said court, wherein Valentin Cota *et al.* are appellants, and the United States are appellees.

Present: Halleck, Peachy & Billings, attorneys, in behalf of the appellants, and P. Ord, U. S. dist. att'y, in behalf of appellees.

Questions by att'y of appellants.

Quest. What is your name, age, and place of residence?

Ans. My name is José Anto. Carrillo; I am sixty-one years of age; and I reside in Los Angeles county, California.

Quest. How long have you lived in California; and when and what offices have you held?

Ans. I was born in California. I have lived at different places; but since the year 1820, I have lived in Los Angeles. I have

87 been judge of "first instance;" a member of the departmental assembly; I have also been a member of the general congress of Mexico; have also been president of the supreme tribunal of justice; I have been major general and lieut. colonel.

Quest. Where were you in the years 1836–'7 and '8, and how employed?

Ans. In 1836 I was a member of the Mexican congress, and I was there in the city of Mexico. In 1837 I returned to California, and continued to remain here.

Quest. State generally the character of the civil and military government of California from 1836 to 1838, inclusive; who were the governors, and what was the nature, character, and authority of such governments

Ans. In the year 1836 I was a member of the Mexican congress; in November, 1836, took place the revolution of Alvarado, he being the oldest member of the departmental assembly, which fact made him, by law, governor. Castro was with Alvarado as military commander. The revolution was against the Mexican government on account of their being natives of Mexico, (the city of Mexico,) and not natives of California. The government of California during the years 1837 and '8, always acted subject to the superior government of
88 Mexico and obedient to that government. During that time the legitimate period arrived for the election of a constitutional governor; atwhich time three (3) persons were proposed, and Alvarado was elected; and he, showing his obedience to the Mexican government, on the arrival of Micheltorena, in 1841 or '2, delivered up to him the command of the government. Nicalas Gutierrez was governor before Alvarado was, in the year 1836. The people, not being satisfied with a central government, expelled Gutierrez from this country, as they were in favor of a federal government. When Gutierrez was expelled, Alvarado, being the oldest member of the departmental assembly of California, came in as governor, and continued as such governor until the regular election, which I think was 1839 or 1840, at which time he was elected governor. The government of Alvarado differed from the preceding government in this, that the preceding governments were central, and that of his was federal. The people of California had no idea seperating themselves from the general government of Mexico. Immediately upon Alvarado's coming in as governor by virtue of his being the oldest member of the assembly, he declared California a free and independent State, it being before only a territory. This fact will be seen from many titles to lands that he issued, made by Alvarado about this time. This free and independent
89 State, declared by Alvarado, was governed by the Mexican laws, and subject to the constitution of 1824. In all forms and modes of proceedings of this government, it was the same as those that proceeded it.

Quest. Was this government recognized by the general government of Mexico; if so, how and when?

Ans. When I returned from Mexico, I brought a commission for my brother Carlos Antonio Carrillo, as governor ad interim; but this appointment being central, and although he was a native of Califor-

nia, yet Alvarado opposed him until the time arrived for the election of a governor, when he was elected ; and all he had done was approved by the Mexican government.

Quest. State what was done by your brother under his commission.

Ans. He came here to Los Angeles, which was the capital, and took possession. This was in December, 1837, but Alvarado would not acknowledge him ; and Alvarado continued on as governor of California until Mexico approved of what he had done. My brother Carlos performed the functions of governor here in Los Angeles, and in San Diego ; all the other parts of California were in favor of Alvarado. My brother continued in the exercise of his functions in Los Angeles about three or four months. He had taken the oath of office. That was all that he did as governor. Alvarado visited
90 different points of the State from Santa Barbara north, and finally made his headquarters at Monterey.

Ques. From 1836, when Gutierrez was expelled, up to 1839 or '40, when you say that Alvarado was elected governor, what was the government in California which was recognized ?

Ans. The federal government of Alvarado was recognized by the people of California, and was subject to the general government of Mexico, for there was no difference in the world between this government of Alvarado and the government that preceeded it, except that Alvarado called California a free and independent State.

Cross-examined by att'y of appellees.

Ques. How long, and when, was Chico governor of California?

Ans. I do not know ; I was in the city of Mexico ; I went there in 1835 ; he was governor during my absence.

Ques. Do you know anything of the circumstances of the expulsion of Governor Chico from California, of your own knowledge or otherwise ; if yea, state what they were ?

Ans. Personally I know nothing ; from history I have learned that it was his tyrany and bad conduct which caused the Californians to expel him. Alvarado and Castro headed the revolution.
91 Chico arrived in California in the latter part of 1836, and remained as governor three or four months ; and in the beginning of 1837 he again returned to the city of Mexico, at which time I was in Mexico as a member of congress. Shortly after the arrival of Chico from California, in Mexico, my brother Carlos was appointed governor *ad interim* of California, he being then in Santa Barbara. I brought his commission to him, and delivered to him his commission, in Los Angeles, on the 8th day of December, 1837.

Quest. Did not Alvarado send troops against your brother after he had received his appointment as governor ; and if yea, state generally what took place.

Ans. He did ; at San Buena Ventura they had a conflict, and afterwards they entered into an agreement, and Alvarado continued on with the government.

JOSÉ ANT'O CARRILLO.

87 been judge of "first instance;" a member of the departmental assembly; I have also been a member of the general congress of Mexico; have also been president of the supreme tribunal of justice; I have been major general and lieut. colonel.

Quest. Where were you in the years 1836–'7 and '8, and how employed?

Ans. In 1836 I was a member of the Mexican congress, and I was there in the city of Mexico. In 1837 I returned to California, and continued to remain here.

Quest. State generally the character of the civil and military government of California from 1836 to 1838, inclusive; who were the governors, and what was the nature, character, and authority of such governments

Ans. In the year 1836 I was a member of the Mexican congress; in November, 1836, took place the revolution of Alvarado, he being the oldest member of the departmental assembly which fact made him, by law, governor. Castro was with Alvarado as military commander. The revolution was against the Mexican government on account of their being natives of Mexico, (the city of Mexico,) and not natives of California. The government of California during the years 1837 and '8, always acted subject to the superior government of

88 Mexico and obedient to that government. During that time the legitimate period arrived for the election of a constitutional governor; atwhich time three (3) persons were proposed, and Alvarado was elected; and he, showing his obedience to the Mexican government, on the arrival of Micheltorena, in 1841 or '2, delivered up to him the command of the government. Nicalas Gutierrez was governor before Alvarado was, in the year 1836. The people, not being satisfied with a central government, expelled Gutierrez from this country, as they were in favor of a federal government. When Gutierrez was expelled, Alvarado, being the oldest member of the departmental assembly of California, came in as governor, and continued as such governor until the regular election, which I think was 1839 or 1840, at which time he was elected governor. The government of Alvarado differed from the preceding government in this, that the preceding governments were central, and that of his was federal. The people of California had no idea seperating themselves from the general government of Mexico. Immediately upon Alvarado's coming in as governor by virtue of his being the oldest member of the assembly, he declared California a free and independent State, it being before only a territory. This fact will be seen from many titles to lands that he issued, made by Alvarado about this time. This free and independent

89 State, declared by Alvarado, was governed by the Mexican laws, and subject to the constitution of 1824. In all forms and modes of proceedings of this government, it was the same as those that proceeded it.

Quest. Was this government recognized by the general government of Mexico; if so, how and when?

Ans. When I returned from Mexico, I brought a commission for my brother Carlos Antonio Carrillo, as governor ad interim; but this appointment being central, and although he was a native of Califor-

nia, yet Alvarado opposed him until the time arrived for the election of a governor, when he was elected ; and all he had done was approved by the Mexican government.

Quest. State what was done by your brother under his commission.

Ans. He came here to Los Angeles, which was the capital, and took possession. This was in December, 1837, but Alvarado would not acknowledge him ; and Alvarado continued on as governor of California until Mexico approved of what he had done. My brother Carlos performed the functions of governor here in Los Angeles, and in San Diego ; all the other parts of California were in favor of Alvarado. My brother continued in the exercise of his functions in Los Angeles about three or four months. He had taken the oath of office. That was all that he did as governor. Alvarado visited
90 different points of the State from Santa Barbara north, and finally made his headquarters at Monterey.

Ques. From 1836, when Gutierrez was expelled, up to 1839 or '40, when you say that Alvarado was elected governor, what was the government in California which was recognized ?

Ans. The federal government of Alvarado was recognized by the people of California, and was subject to the general government of Mexico, for there was no difference in the world between this government of Alvarado and the government that preceeded it, except that Alvarado called California a free and independent State.

Cross-examined by att'y of appellees.

Ques. How long, and when, was Chico governor of California?

Ans. I do not know ; I was in the city of Mexico ; I went there in 1835 ; he was governor during my absence.

Ques. Do you know anything of the circumstances of the expulsion of Governor Chico from California, of your own knowledge or otherwise ; if yea, state what they were ?

Ans. Personally I know nothing ; from history I have learned that it was his tyrany and bad conduct which caused the Californians to expel him. Alvarado and Castro headed the revolution.
91 Chico arrived in California in the latter part of 1836, and remained as governor three or four months ; and in the beginning of 1837 he again returned to the city of Mexico, at which time I was in Mexico as a member of congress. Shortly after the arrival of Chico from California, in Mexico, my brother Carlos was appointed governor *ad interim* of California, he being then in Santa Barbara. I brought his commission to him, and delivered to him his commission, in Los Angeles, on the 8th day of December, 1837.

Quest. Did not Alvarado send troops against your brother after he had received his appointment as governor ; and if yea, state generally what took place.

Ans. He did ; at San Buena Ventura they had a conflict, and afterwards they entered into an agreement, and Alvarado continued on with the government.

JOSÉ ANT'O CARRILLO.

Sworn and subs'd to before me this 4th day of February, A. D. 1857.

C. SIMS, *U. S. Com'r.*

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions, under
92 the acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing depositions of José Antonio Carrillo was taken before me on the 4th day of February, A. D. 1857, according to the consent and agreement of the said parties, at the United States district court-house, in the city of Los Angeles, and State of California, in behalf of the appellants; that the said José Antonia Carrillo was by me duly sworn, according to law, as a witness in said cause, in the caption of this deposition mentioned; and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal (having no seal of office) this 4th day of February, A. D. 1857.

C. SIMS,
United States Commissioner.

Filed this 4th February, 1857.

C. SIMS, *Clk*,
p. J. H. COLEMAN, *Dep'ty.*

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Depo. of M. Requena.

THE UNITED STATES, appellee,
vs.
VALENTIN COTA *et al.*, appl'ts
} Case No. 231.

Deposition of Manuel Requena, taken before C. Sims, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on the 9th day of February, A. D. 1857, at 11 o'clock a. m on said day, on behalf of the appellants, by consent of parties, to be used as testimony in a certain cause now pending in the, being case No. 231 on the docket of said court, wherein Valentin Cota *et al.* are appellants, and the United States are appellees.

Present: Billings, esq., attorney, in behalf of the appellants, and P. Ord, esq., U. S. att'y, in behalf of appellees.

Quest. What is your name, age and place of residence?

Ans. My name is Manuel Requena; my age is 55 years; and I reside in the city and county of Los Angeles.

Quest. How long have you lived in California, and what offices have you held under the government of California?

Ans. I have resided in California for 22 years and upwards; I have been judge of the first instance, in the years '36 and '44, and I have also been a member of the departmental assembly.

Ques. From the year 1836 and thereafter, name the governors of California and their periods of office?

95 Ans. In '36 Nicolas Gutierrez was governor, and was succeeded by Juan B. Alvarado, who became governor, being the oldest member of the territorial deputation.

Alvarado continued governor until the arrival of Micheltorena, which I think was in '43. In 1837, in November, I think, a commission came from Mexico to Carlos Carrillo, appointing him governor, who remained in Los Angeles, as governor, by right, but Alvarado was the *de facto* governor in Monterey, and he was recognized by the people of California as governor. A representation was sent on to Mexico stating the opposition of Alvarado to Carrillo, but the goverment appointed Alvarado as governor, and approved his acts from his entrance into office.

Quest. State what Carrillo did under his commission.

Ans. He only acted in self defence here in Los Angeles, in opposition to the government of Alvarado. This he did till about March, '38, at which time I left for Lower California. On my return in October, in the same year, I found Alvarado acting as governor.

Quest. In what respect did the government of Alvarado differ from that of any other governor of California?

Ans. There was no difference whatever. He governed in the name of the Mexican nation, following the same routine as other

96 governors, and the only difference was in name. Many States of Mexico opposed the policy of the general government of Mexico, and California, under Alvarado, only did the same, all the while being subject to the Mexican government. This opposition to the policy of the Mexican government was simply in the desire of the people to have a federal rather than a central government. In this opposition there was not the slightest intention to become independent of the Mexican government.

Cross-examined by U. S dis't att'y.

Quest. State fully and particularly at what time, and in what manner, the Mexican government approved of the acts of Alvarado during his revolutionary or independent government in Cal'a.

Ans. From the commencement of Alvarado's government up to the time of the arrival of Micheltorena, I never heard of the Mexican government having disapproved his acts.

Quest. Is this the only knowledge that you have of the approval by the Mexican government of the revolutionary government of Alvarado?

Ans. Yes.

MANUEL REQUENO.

97 I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil

cases pending in the courts of the United States, and depositions, under the acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of Manuel Requena was taken before me on the 9 day of February, A. D. 1857, according to the consent of parties, at the United States district court-house, in the city of Los Angeles and State of California, in behalf of the appellants; that the said Manuel Requena was by me duly sworn, according to law, as a witness in said cause, in the caption of this deposition mentioned; and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence

In witness whereof I hereunto set my hand and purate seal (having no seal of office) this 9 day of February, A. D. 1857.

C. SIMS,
United States Commissioner.

Filed this 9th day February, 1857.

C. SIMS, *Cl'k*—
p. J. H. COLEMAN, *Dep'ty.*

98 *Motion for continuance.*

U. S. dist. court, south'n district of California.

THE UNITED STATES, appellee,
vs.
VALENTIN COTA *et al.*, appellants } No. 231.

The att'ys of the appellants in the above case move for a continuance, and for grounds state that it is necessary to take the depositions of certain witnesses in the northern district, and that, by a stipulation between the att'ys of the appellants and the att'y of the U. S., it has been stipulated that they may be taken.

HALLECK, PEACHY & BILLINGS.

Filed Feb'y 10th, 1857.

C. SIMS, *Cl'k.*

Order of continuance

99 Whereupon the following order was made in open court, to wit:

U. S. dist. court, south'n dist. of California.—December term, A. D. 1856.

VALENTIN COTA *et al.*, appellants,
ads.
THE UNITED STATES, appellees. } No. 231.—Rio de Santa Clara.

FEBRUARY 10TH, A. D. 1857.

Now, on this day, come the parties aforesaid, by their respective attorneys—the appellants by Halleck, Peachy & Billings, esqs., and the appellees by P. Ord, esq., U. S. att'y.

Whereupon, on motion of attorneys of appellants, it is ordered that the aforesaid cause be continued generally.

100 *Affidavit of A. Olivera.*

STATE OF CALIFORNIA,
County of Santa Barbara, ss:

Antonio Olivera, being duly sworn, says that in the year eighteen hundred and forty he was a justice of the peace in and for the pueblo of Santa Barbara, in Alta California; that in said year there was presented to this deponent a grant by Juan B. Alvarado, then governor of California, to Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, José Maria Valenzuela, Vicente Felis, Vicente Pico, and Rafael Valdez, of certain lands within the jurisdiction of this deponent as said justice of the peace, situate to the east of the mission of San Buenaventura, then and still known as the rancho of "Rio de Santa Clara;" that upon the presentation of said grant this deponent did, as said justice of the peace, assisted by Simon O. Donahoe and Antonio Rodriguez as witnesses, deliver possession of the aforesaid lands to the above-named grantees. Deponent further says that after giving possession of said lands there remained to the government no sobrante or surplus. Deponent further says that immediately after giving possession of said land he prepared a statement thereof in due and legal form, and deposited the same in the public mail then authorized and employed by the government of California, addressed and directed to his excellency Don Juan B. Alvarado, then governor of California, residing in Monterey. And this deponent further says that he verily believes that said

101 statement was duly and delivered to said Governor Alvarado.

Deponent further says that he is now more than seventy-two years of age; that he is very infirm; and that he has not been able to leave his house for more than two months, and that he is at this present time compelled to keep his bed.

his
ANTONIO MARIA + OLIVERA.
mark.

Witness: A. F. HINCHMAN.

Subscribed and sworn before me this 22d day of February, 1857.
FERNANDO PICO, *Juez de Paz.*

Filed June 3, 1857.

A. S. TAYLOR.

102 *Cause submitted.*

Whereupon the following proceedings were had in open court, to wit:

United States district court, south'n dis't of California.—Regular June term, 1857.

VALENTIN COTA *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 231.

JUNE 3D, 1857.

Now, on this day, this cause coming on to be heard, the parties appearing by their respective attorneys: the appellants by Halleck,

Peachy & Billings, esq's., and the appellees by P. Ord, U. S dis't att'y.

Whereupon the appellants file the affidavit of A. M. Olivera, shewing that in 1840 he as justice of the peace of the pueblo of Santa Barbara, upon the presentation of the grant of land in this case, he delivered possession of said lands to the appellants and others.

Whereupon, after argument of counsel aforesaid, the cause is submitted to and taken under advisement by the court.

103 *Decision.*

Whereupon the following order was made in open court, to wit:

U. S. dis't court, south'n dis't of California.—Regular June term, 1857

VALENTIN COTA, appellants,
vs.
THE UNITED STATES, app'ees. } No. 231.

JUNE 4TH, 1857.

Now, on this day, the court delivered its opinion in this cause, confirming the claim of the appellants, and a decree was ordered to be entered up in conformity to said opinion, which is accordingly done.

104 *Decree.*

In the United States district court in and for the southern district of California.—June term, 1857.—Hon. Isaac S. K. Ogier, judge.

VALENTIN COTA, LEANDRO GONZALES, RAFAEL GONZALES, SALVADOR VALENZUELA, VICENTE PICO, JOSÉ M'A VALENZUELA, RAFAEL VALDEZ, and VICENTE FELIS, appellants,
vs.
THE UNITED STATES, app'lees. } No. 231.—Transcript No. 225.

This cause coming on to be heard, on appeal from the decision of the board of commissioners to ascertain and settle private land claims in the State of California, upon the transcript of the proceedings, and the decision of said board and the documentary and other evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard:

It is ordered, adjudged, and decreed, that the decision of said board of commissioners declaring invalid and rejecting the claim of the appellants to the land set forth and described in their petition to said board, and the documentary and other evidence in this case be, and

the same is hereby, reversed. And it is further ordered,
105 adjudged, and decreed, that the title of the appellants, Valentin Cota, Leandro Gonzales, Rafael Gonzales, Salvador Valenzuela, Vicente Pico, Rafael Valdez and Vicente Feliz and José Maria Valenzuela, to the lands so claimed by them is a good and valid title, and that their claim to said land be, and the same hereby is, confirmed.

The land of which confirmation is hereby made is situate in the county of Santa Barbara, and known as "El Rio Santa Clara," and is bounded as follows: beginning on the Santa Clara river in the place called "El Paso del Rio," and thence easterly two and a half leagues to a hill called the "En Medio," on the side of the main road to El Conejo; thence southerly to the sea-shore, between two esteros, three leagues; thence over the plain along the sea-shore, northwest to the river where there is a cienega, or marsh, three leagues; thence over the plain and along the bank of the river to the point of beginning, one and a half leagues, stakes being driven in each corner—as is more particularly described in the juridical possession which is of record in this case, and to which reference is had in aid of said description.

ISAAC S. K. OGIER,
U. S. Dis't Judge.

Filed 4 June, '57. A. S. TAYLOR, *D'p'ty Cl'k.*

106 *Motion for leave to appeal.*

Whereupon the following proceedings were had, to wit:

U. S. dist. court, south'n dist. of Cal'a.—December term, A. D. 1857.

VALENTIN COTA *et al.*, app'l'ts, *vs.* THE UNITED STATES, app'l'es. } No. 231.

MARCH 15TH, 1858.

On motion of E. J. C. Kewen, acting U. S. dist. att'y, for leave to appeal herein, is taken under advisement.

Vacation of motion for leave to appeal.

U. S dist. court south'n dist. Cal'a.—December term, A. D. 1858.

VALENTIN COTA *et al.*, appell't, *vs.* THE UNITED STATES, appellees. } No. 231.

DECEMBER 7, 1858.

Now, on this day, comes J. R. Gitchell, U. S. dist. att'y, and moves the court to withdraw the motion heretofore made for leave to appeal herein; which motion, being heard by the court, is granted, and the motion heretofore filed is hereby withdrawn.

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108 *Appeal.*

United States district court, south'n dist. Cal'a.—December term, A. D. 1862.

VALENTIN COTA *et al.*, appellants, } No. 231, D. C.
vs. } No. 225, L. C.
THE UNITED STATES, appellee. } Rio de Santa Clara.

DECEMBER 9TH, 1862.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the United States, (there being no U. S. district attorney present,) and moves the court that an appeal be allowed the United States in this case to the Supreme Court of the United States, from the order and decree of this court heretofore rendered.

Which motion, being heard, and by the court understood, is granted.

109 United States district court, south'n district of Cal'a.

CLERK'S OFFICE, MONTEREY.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing 108 pages, numbered from 1 to 108, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file and of record in my office, in case No. 231 on the docket of said court, wherein Valentin Cota *et al.* are the claimants against the United States for the place known by the name of "Rio de Santa Clara."

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court this the 10th day of Feb'y, A. D. 1862, at the city of Monterey, California.

JOHN O. WHEELER, *Clerk.*

Filed Sep't 20th, 1862.

SUPREME COURT OF THE UNITED STATES.

No. 154.

December Term, 1863.

THE UNITED STATES, appellants,
vs.
VALENTIN COTA *et al.*, appellees.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

This grant must be rejected:

1st. *Because it is not legally authenticated.* It is proved only by evidence of the *handwriting* of Alvarado & Prudhon, without any basis having been laid for the introduction and use of secondary evidence. (Printed Record, p. 3, fol. 9.) Both these parties were living at the time. The non-examination of Alvarado in regard to this grant is the more remarkable from the fact that the cause was *continued* by the district court on the affidavit of claimants' counsel, "that *Alvarado was a material witness for the claimants* in said case, *without whose testimony they could not safely proceed to trial;*" (Printed Record, pp. 20, 21;) and yet *he was never examined in the case* afterwards. From his known character as a witness in these cases, his non-examination is a very remarkable fact. It is sufficient to say, however, on this point, that *the grant is not legally proved.*

2d. *Because there is no archive evidence whatever of its existence.* All the written proofs of title have been produced from *the private possession* of the claimants. From the facility with which grants have been fabricated in California, in the absence of some archive evidence of the validity of these grants, papers thus produced have been *discredited* by the repeated decisions of this court.

3d. Because, admitting the genuineness of the proofs of title, they do not purport to make a *grant* of the lands, but only to confer a *temporary right of occupancy.* (See printed Record, pp. 6, 9–10.)

4th. Because the title does not purport to emanate from "Mexico or Spain," but from "the free and sovereign State of Upper California," and does not, therefore, come within the provisions of the act of March 3, 1851, relating to private land claims in California.

This point is very forcibly presented in the opinion of the Land Board, who rejected the claim on this ground alone. (Printed Record, pp. 10–13.) Evidence was offered by the claimants in the district court to show a confirmation of the acts of Alvarado as revolutionary governor by the authorities of Mexico. (See testimony of Bonilla, Ib., pp. 33, 34; of Camillo, Ib., pp. 36, 37; and of Requena, ib.,

p. 39.) But, upon examination, it will be found to be *mere hearsay evidence.* The substance of the last witness's testimony is, "that he *never heard* that the Mexican government had *disapproved* of Alvarado's acts." (Ib., p. 39, cross-exam.) All this is entirely unsatisfactory, and will not take the case out of the principles laid down by the land board.

5th. Because the title does not fix the *quantity* to be allotted to each of the petitioners for their *provisional occupancy.* It is not said whether the parties are to receive *town lots* or *leagues of land.* From the reference to "the municipal authority of Santa Barbara," and the great numbers joining in the application, so unusual, if not entirely unparalleled, in applications for *rural* grants, the inference would seem to be, that the application was for the right to occupy *small lots* on the banks of the Santa Clara river, and not for rural lands with which to found a rancho. This view is strikingly confirmed by the testimony of Pablo de la Guerra. In answer to the question, "To what extent was the land cultivated?" he answers, "*about sixty or ninety yards square.* * * The land was cultivated *in different parcels,* and I am not able to say what *these parcels altogether* would amount to; but *my impression is that it altogether would amount to about two hundred yards square.*" (Ib., pp. 3, 4.)

The proceedings of the so-called juridical possession were *entirely arbitrary.* Instead of making *several allotments* to the petitioners of the character already indicated, the officer laid off to them, *jointly,* a tract of land two and a half leagues long from west to east; three leagues long from north to south; three leagues long from east to west, and one and a half leagues long from south to north, containing, in the aggregate, at least five leagues of land. (Ib., pp. 8–9.) With the same propriety, *double* that quantity might have been allotted. The court below has adopted the juridical measurement as defining the limits of the claim, and has entered a decree in favor of the claimants for *title* to that extent, (Ib., p. 43,) without authority.

On all these grounds the United States contend that the decree is erroneous. They ask, therefore, that the decree shall be reversed and the claim rejected.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.

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